

SECOND REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILLS NOS. 712 & 882

## 94TH GENERAL ASSEMBLY

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Reported from the Committee on Commerce, Energy and the Environment, February 21, 2008, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

3257S.06C

### AN ACT

To amend chapter 407, RSMo, by adding thereto eight new sections relating to merchandising practices.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 407, RSMo, is amended by adding thereto eight new sections, to be known as sections 407.1380, 407.1382, 407.1384, 407.2050, 407.2053, 407.2056, 407.2059, and 407.2062, to read as follows:

**407.1380. As used in sections 407.1380 to 407.1384, the following terms shall mean:**

**(1) "Consumer", any individual;**

**(2) "Consumer credit reporting agency", any entity that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages, in whole or in part, in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer credit reports to third parties;**

**(3) "Credit report", any written or electronic communication of any information by a consumer credit reporting agency that in any way bears upon a person's credit worthiness, credit capacity, or credit standing;**

**(4) "Security freeze", a notice placed in a consumer's credit report, at the request of the consumer, that prohibits the consumer credit reporting agency from releasing the consumer's credit report, credit score, or any information contained in the report without the express authorization of the consumer.**

**407.1382. 1. A consumer may request that a consumer credit reporting agency place a security freeze on that consumer's credit**

3 report, if that request is made:

4 (1) In writing by certified mail or personal delivery; or

5 (2) By other reliable means, including Internet, telephone, or  
6 facsimile; and

7 (3) Proper identification is presented to adequately identify the  
8 requestor as the consumer subject to the credit report.

9 2. A consumer credit reporting agency shall honor a consumer's  
10 request for a security freeze within five days of receipt of such request. No  
11 consumer credit reporting agency shall assess a fee to a consumer for  
12 the consumer's first request for a security freeze, but a consumer credit  
13 reporting agency may assess a fee up to ten dollars for any subsequent  
14 request for a security freeze made by the same consumer.

15 3. A consumer credit reporting agency shall, within ten days of  
16 placing a security freeze on the consumer's credit report, send the  
17 consumer:

18 (1) Written confirmation of compliance with the consumer's  
19 request;

20 (2) Instructions explaining the process of placing, removing, and  
21 temporarily lifting a security freeze and the process for allowing access  
22 to information from the consumer's credit report for a specific  
23 requestor;

24 (3) A unique personal identification number or password to be  
25 used by the consumer to remove temporarily or permanently the  
26 security freeze or designate a specific requestor for receipt of the  
27 credit report despite the security freeze.

28 4. A consumer credit reporting agency shall not furnish a credit  
29 report to any person if the consumer who is subject to the credit report  
30 has requested a security freeze be placed on that report unless the  
31 credit report:

32 (1) Is requested by the consumer who is subject to the report;

33 (2) Is furnished under a court order;

34 (3) Is furnished during a period in which the consumer has  
35 temporarily removed the freeze;

36 (4) Is requested for the purposes of prescreening as provided by  
37 the Fair Credit Reporting Act under 15 U.S.C. 1681 et seq.;

38 (5) Is requested by a child support enforcement agency;

39 (6) Is requested for use in setting or adjusting a rate, issuing or

40 underwriting a policy, adjusting a claim or servicing a policy for  
41 underwriting for property and casualty insurance purposes;

42 (7) Is requested by a specific person, or the subsidiary, affiliate,  
43 agent, or assignee of such person, whom the consumer has identified as  
44 eligible for receipt of the credit report under subsection 6 of this  
45 section, despite the consumer's request for a security freeze;

46 (8) Is furnished to a person, or the subsidiary, affiliate, agent, or  
47 assignee of such person, with whom the consumer has a debtor-creditor  
48 relationship for the purpose of account review or collecting the  
49 financial obligation owing for the account contract or debt;

50 (9) Is requested by the state or its agents or assigns for the  
51 purpose of investigating fraud or investigating or collecting delinquent  
52 taxes;

53 (10) Is requested by a person or entity administering a credit file  
54 monitoring service or similar service to which the consumer has  
55 subscribed; or

56 (11) Is requested for any other purpose that is otherwise  
57 allowable under the Fair Credit Reporting Act under 15 U.S.C. 1681 et  
58 seq.

59 5. If a security freeze is in place, a consumer credit reporting  
60 agency shall not change any of the following official information in a  
61 consumer credit report without sending a written confirmation of the  
62 change to the consumer within thirty days of the change being posted  
63 to the consumer's file: name, date of birth, social security number, and  
64 address. Written confirmation is not required for technical  
65 modifications of a consumer's official information, including name and  
66 street abbreviations, complete spellings, or transposition of numbers or  
67 letters. In the case of an address change, the written confirmation shall  
68 be sent to both the new address and to the former address.

69 6. A consumer may request that the consumer credit reporting  
70 agency furnish a credit report to a designated person despite the  
71 consumer request for a security freeze under subsection 1 of this  
72 section, if that request is made:

73 (1) In writing by certified mail or personal delivery; or

74 (2) By other reliable means, including Internet, telephone, or  
75 facsimile; and

76 (3) Proper identification is presented to adequately identify the

77 requestor as the consumer subject to the credit report, which shall  
78 include the unique personal identification number or password issued  
79 to the consumer under subsection 3 of this section.

80 7. A consumer credit reporting agency shall temporarily or  
81 permanently remove a security freeze within one business day of  
82 receiving a request for removal from a consumer, if that request is  
83 made:

84 (1) In writing by certified mail or personal delivery; or

85 (2) By other reliable means, including Internet, telephone, or  
86 facsimile; and

87 (3) Proper identification is presented to adequately identify the  
88 requestor as the consumer subject to the credit report, which shall  
89 include the unique personal identification number or password issued  
90 to the consumer under subsection 3 of this section; and

91 (4) In the case of a request for temporary removal, the time  
92 period is specified for which the freeze shall be temporarily removed.

93 8. At any time a consumer is required to receive a summary of  
94 rights under 15 U.S.C. Section 1681g(d), the following notice shall be  
95 included:

96 "Missouri Consumers Have the Right to Obtain a Security Freeze.

97 You have a right to place a "security freeze" on your credit  
98 report, which will prohibit a consumer credit reporting agency from  
99 releasing information in your credit report without your express  
100 authorization. A security freeze must be requested in writing by  
101 certified mail or via other approved methods. The security freeze is  
102 designed to prevent credit, loans, and services from being approved in  
103 your name without your consent. However, you should be aware that  
104 using a security freeze to take control over who gets access to the  
105 personal and financial information in your credit report may delay,  
106 interfere with, or prohibit the timely approval of any subsequent  
107 request or application you make regarding a new loan, credit,  
108 mortgage, government services or payments, rental housing,  
109 employment, investment, license, cellular phone, utilities, digital  
110 signature, Internet credit card transaction, or other services, including  
111 an extension of credit at point of sale. When you place a security freeze  
112 on your credit report, you will be provided a personal identification  
113 number or password to use if you choose to remove the freeze on your

114 credit report or authorize the release of your credit report for a period  
115 of time after the freeze is in place. To provide that authorization you  
116 must contact the consumer credit reporting agency and provide all of  
117 the following:

- 118 (1) The personal identification number or password;
- 119 (2) Proper identification to verify your identity;
- 120 (3) The proper information regarding the period of time for  
121 which the report shall be available.

122 A consumer credit reporting agency must authorize the release  
123 of your credit report no later than three business days after receiving  
124 the above information.

125 A security freeze does not apply to a person or entity, or its  
126 affiliates, or collection agencies acting on behalf of the person or  
127 entity, with which you have an existing account, that requests  
128 information in your credit report for the purposes of reviewing or  
129 collecting the account. Reviewing the account includes activities  
130 related to account maintenance, monitoring, credit line increases, and  
131 account upgrades and enhancements.

132 You have a right to bring civil action against anyone, including  
133 a consumer credit reporting agency, who improperly obtains access to  
134 a file, knowingly misuses file data, or fails to correct inaccurate file  
135 data."

407.1384. 1. Any consumer credit reporting agency that  
2 knowingly fails to comply with the provisions of sections 407.1380 to  
3 407.1384 shall be liable to the consumer who is subject to the credit  
4 report in an amount equal to:

- 5 (1) Any actual damages sustained by the consumer due to such  
6 failure; and
- 7 (2) Any court costs and fees assessed in maintaining the action,  
8 as well as reasonable attorney's fees.

9 2. In addition to the foregoing monetary sums, a court, upon  
10 request of the damaged consumer, shall award such equitable relief as  
11 may be necessary to restore the damaged consumer's credit and to  
12 discourage future violations of sections 407.1380 to 407.1384 by the  
13 consumer credit reporting agency.

407.2050. As used in sections 407.2050 to 407.2062, the following  
2 terms shall mean:

3           (1) "Advertisement", the attempt by publication, dissemination,  
4 solicitation, circulation, or any other means to induce, directly or  
5 indirectly, any person to enter into any obligation or acquire any title  
6 or interest in any merchandise;

7           (2) "After-rebate price", the price of merchandise after the  
8 amount of a rebate is deducted from the price of merchandise;

9           (3) "Person", any natural person or his or her legal  
10 representative, partnership, firm, for-profit or not-for-profit  
11 corporation, whether domestic or foreign, company, foundation, trust,  
12 business entity or association, and any agent, employee, salesman,  
13 partner, officer, director, member, stockholder, associate, trustee or  
14 cestui que trust thereof;

15           (4) "Mail-in rebate", a rebate involving a return to the consumer  
16 of any portion of the price paid for merchandise which occurs after the  
17 consumer purchases the merchandise and usually involves the  
18 consumer submitting proof of purchase;

19           (5) "Merchandise", any objects, wares, goods, commodities,  
20 intangibles, real estate, or services;

21           (6) "Rebate", a deduction from the amount charged to the  
22 consumer for merchandise or a return to the consumer of any portion  
23 of the amount paid by the consumer for the purchase of merchandise;

24           (7) "Sale", any sale, lease, offer for sale or lease, or attempt to sell  
25 or lease merchandise for cash or on credit.

407.2053. 1. In any sale of merchandise involving the use of a  
2 rebate, it shall be considered an unlawful practice under section  
3 407.020 for a person to use the after-rebate price in any advertisement  
4 for merchandise unless:

5           (1) The amount of the rebate is provided to the consumer by the  
6 seller at the time of purchase of the merchandise; or

7           (2) If for a mail-in rebate, such advertisement includes:

8           (a) A conspicuous disclosure containing the words "This price is  
9 valid only after the consumer submits a mail-in rebate.";

10           (b) The dollar value of the mail-in rebate; and

11           (c) The price the consumer will be charged at the time of  
12 purchase with a conspicuous disclosure containing the words "This is  
13 the price the consumer will be charged at the time of purchase before  
14 any mail-in rebate is applied."

15 This section shall not be construed as requiring a person to provide the  
16 amount of a rebate to a consumer at the time of purchase of  
17 merchandise for which a rebate is offered, provided that any  
18 advertisement for such merchandise does not include the after-rebate  
19 price or else complies with the requirements of subdivision (2) of this  
20 subsection.

21 2. A person shall not be held liable for a violation under this  
22 section if such person did not produce, or cause to be produced, an  
23 advertisement that violates this section, regardless of whether such  
24 person sells the merchandise for which the rebate is advertised.

407.2056. 1. A person shall not require a consumer to provide  
2 more than the following as proof of purchase for purposes of redeeming  
3 a rebate:

- 4 (1) A receipt for the purchase of the merchandise;
- 5 (2) A universal product code, packing slip, or packaging element  
6 that is clearly and conspicuously marked as the necessary proof of  
7 purchase for the rebate offer;
- 8 (3) The name of the consumer;
- 9 (4) The address of the consumer;
- 10 (5) The consumer's telephone number;
- 11 (6) The consumer's membership number, if applicable;
- 12 (7) The consumer's signature; and
- 13 (8) In the event that the eligibility for the rebate is triggered by  
14 an electronic transaction, a valid proof of the electronic transaction.

15 2. For purposes of subdivision (1) of subsection 1 of this section,  
16 a copy of the receipt shall be sufficient unless the consumer is provided  
17 with a duplicate original receipt for each item of merchandise  
18 associated with a rebate, in which case the duplicate original may be  
19 required.

20 3. In addition to the information permitted to be requested  
21 under subsection 1 of this section, a person may require:

- 22 (1) The consumer to write the model number or other identifying  
23 number on a rebate claim form only if the receipt does not reveal the  
24 product name, type, model, or other identifying number;
- 25 (2) Instead of a telephone number, a consumer's email address  
26 with respect to merchandise purchased over the Internet, Internet-  
27 based services, or Internet rebate redemptions; or

28           **(3) If the rebate offer is contingent upon ownership of another**  
29 **item of merchandise, reasonable proof of ownership of such other item.**

30           **4. A person offering a rebate shall not require personal**  
31 **information about the consumer other than the information permitted**  
32 **under subsections 1 and 3 of this section.**

33           **5. Notwithstanding subsection 1 of this section, a person has the**  
34 **right to reject a consumer rebate claim or to request reasonable**  
35 **additional documentation to verify a claim if the person has reason to**  
36 **believe that the consumer submitting the rebate request is attempting**  
37 **to commit fraud, has already received the offered rebate, or that the**  
38 **proof of purchase is not from a legitimate item of merchandise.**

**407.2059. 1. A person offering a mail-in rebate shall provide the**  
2 **rebate claim form directly with the merchandise, or at the same**  
3 **location and at the same time that the consumer purchases the**  
4 **merchandise.**

5           **2. If a person sells merchandise on which another person offers**  
6 **a mail-in rebate, the person offering the rebate shall supply the person**  
7 **selling the merchandise with rebate claim forms either by providing:**

8           **(1) A sufficient quantity of rebate claim forms based on**  
9 **reasonably anticipated sales; or**

10           **(2) The means for the person selling the merchandise to create**  
11 **a rebate claim form at the time and place of sale.**

12           **3. For purposes of Internet sales, a generally accessible web**  
13 **page, including a rebate claim form thereon, shall comply with this**  
14 **section. For purposes of telephone sales, directing consumers to a**  
15 **generally accessible web page, including the rebate claim form, and,**  
16 **upon request, sending the rebate claim form via the consumer's choice**  
17 **of regular or electronic mail or telecopy shall comply with this section.**

18           **4. Except as provided in subsection 5 of this section, any mail-in**  
19 **rebate claim form under this section shall conspicuously disclose a**  
20 **telephone number on the form that a consumer may call to check the**  
21 **status of his or her rebate claim.**

22           **5. For purchases of merchandise that occur over a website**  
23 **operated or maintained by that person, a website or other electronic**  
24 **means may be provided instead of the telephone number required in**  
25 **subsection 4 of this section to check the status of a rebate claim.**

**407.2062. 1. A person that offers a mail-in rebate shall allow a**

2 minimum of thirty days from the date the consumer purchases the  
3 merchandise, or becomes eligible for the rebate pursuant to subdivision  
4 (2) of subsection 2 of this section, for the consumer to submit the rebate  
5 claim.

6 2. A person shall mail the rebate payment or transmit the rebate  
7 funds to the consumer, or otherwise fulfill the terms of the mail-in  
8 rebate offer, within thirty days from either of the following events as  
9 applicable:

10 (1) Upon receipt of a consumer rebate claim meeting the terms  
11 and conditions of the rebate offer, to the extent permitted by sections  
12 407.2050 to 407.2062, and as disclosed at the time of purchase; or

13 (2) If the consumer rebate offer is conditioned upon a consumer  
14 staying with a service contract for a minimum length of time, then  
15 upon completion of this term of the rebate offer and receipt of a rebate  
16 claim meeting the terms and conditions for the rebate offer, to the  
17 extent permitted by sections 407.2050 to 407.2062 and as disclosed at  
18 the time of purchase.

19 3. If an advertisement for a mail-in rebate does not specify the  
20 monetary form in which the rebate shall be awarded, then the rebate  
21 shall be awarded in cash, check, or an equivalent method of  
22 payment. Reward cards shall not qualify as an equivalent method of  
23 payment. For purposes of this section, a "reward card" is a card that:

24 (1) Requires activation; or

25 (2) Has an expiration date; or

26 (3) Is not redeemable for cash; or

27 (4) Is not universally accepted as a form of payment.

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